



Sen. John J. Cullerton

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LRB094 05626 LCB 45443 a

1 AMENDMENT TO HOUSE BILL 394

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 394 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Marriage and Dissolution of  
5 Marriage Act is amended by changing Section 607 as follows:

6 (750 ILCS 5/607) (from Ch. 40, par. 607)

7 Sec. 607. Visitation.

8 (a) A parent not granted custody of the child is entitled  
9 to reasonable visitation rights unless the court finds, after a  
10 hearing, that visitation would endanger seriously the child's  
11 physical, mental, moral or emotional health. If the custodian's  
12 street address is not identified, pursuant to Section 708, the  
13 court shall require the parties to identify reasonable  
14 alternative arrangements for visitation by a non-custodial  
15 parent, including but not limited to visitation of the minor  
16 child at the residence of another person or at a local public  
17 or private facility.

18 (a-3) If a minor child is the subject of a petition under  
19 Section 2-13 of the Juvenile Court Act of 1987, any petition  
20 for visitation must be filed in the court in which the petition  
21 under Section 2-13 is pending. Nothing in subsection (a-5) of  
22 this Section shall apply to a child in whose interests a  
23 petition under Section 2-13 of the Juvenile Court Act of 1987  
24 is pending.

1 (a-5) (1) Except as otherwise provided in this subsection  
2 (a-5), any grandparent, great-grandparent, or sibling of the  
3 child may file a petition for visitation rights to a minor  
4 child if there is an unreasonable denial of visitation by a  
5 parent and at least one of the following conditions exists:

6 (A) one parent of the child is incompetent as a matter  
7 of law or deceased or has been sentenced to a period of  
8 imprisonment for more than 1 year;

9 (B) the child's mother and father are divorced or have  
10 been legally separated from each other during the 3 month  
11 period prior to the filing of the petition and at least one  
12 parent does not object to the grandparent,  
13 great-grandparent, or sibling of the child having  
14 visitation with the child. The visitation of the  
15 grandparent, great-grandparent, or sibling of the child  
16 must not diminish the visitation of the parent who is not  
17 related to the grandparent, great-grandparent, or sibling  
18 of the child seeking visitation;

19 (C) the court, other than a Juvenile Court, has  
20 terminated a parent-child relationship and the  
21 grandparent, great-grandparent, or sibling of the child is  
22 the parent, grandparent, or child of the person whose  
23 parental rights have been terminated, except in cases of  
24 adoption. The visitation must not be used to allow the  
25 parent who lost parental rights to unlawfully visit with  
26 the child;

27 (D) the child is born out of wedlock illegitimate, the  
28 parents are not living together, and the petitioner is a  
29 maternal grandparent, great-grandparent, or sibling of the  
30 born out of wedlock illegitimate child; or

31 (E) the child is born out of wedlock illegitimate, the  
32 parents are not living together, the petitioner is a  
33 paternal grandparent, great-grandparent, or sibling, and  
34 the paternity has been established by a court of competent

1 jurisdiction.

2 (2) Post-adoption visitation rights for the biological  
3 grandparents or great-grandparents of an adoptee may be granted  
4 if the adoptee is adopted by: (A) the adoptee's stepparent,  
5 grandparent, grandmother, brother, half-brother, sister,  
6 half-sister, aunt, or uncle; or (B) a person listed in item (A)  
7 and that person's spouse. The visitation rights may be  
8 maintained or granted at the discretion of the court at any  
9 time before or after the entry of the final order of adoption  
10 upon petition by the biological grandparents or  
11 great-grandparents. The grandparent, great-grandparent, or  
12 sibling of a parent whose parental rights have been terminated  
13 through an adoption proceeding may not petition for visitation  
14 rights.

15 (3) In making a determination under this subsection (a-5),  
16 there is a rebuttable presumption that a fit parent's actions  
17 and decisions regarding grandparent, great-grandparent, or  
18 sibling visitation are not harmful to the child's mental,  
19 physical, or emotional health. The burden is on the party  
20 filing a petition under this Section to prove that the parent's  
21 actions and decisions regarding visitation times are harmful to  
22 the child's mental, physical, or emotional health.

23 (4) In determining whether to grant visitation, the court  
24 shall consider the following:

25 (A) the preference of the child if the child is  
26 determined to be of sufficient maturity to express a  
27 preference;

28 (B) the mental and physical health of the child;

29 (C) the mental and physical health of the grandparent,  
30 great-grandparent, or sibling;

31 (D) the length and quality of the prior relationship  
32 between the child and the grandparent, great-grandparent,  
33 or sibling;

34 (E) the good faith of the party in filing the petition;

1 (F) the good faith of the person denying visitation;

2 (G) the quantity of the visitation time requested and  
3 the potential adverse impact that visitation would have on  
4 the child's customary activities;

5 (H) whether the child resided with the petitioner for  
6 at least 6 consecutive months with or without the current  
7 custodian present;

8 (I) whether the petitioner had frequent or regular  
9 contact with the child for at least 12 consecutive months;  
10 and

11 (J) any other fact that establishes that the loss of  
12 the relationship between the petitioner and the child is  
13 likely to harm the child's mental, physical, or emotional  
14 health.

15 (5) The court may order visitation rights for the  
16 grandparent, great-grandparent, or sibling that include  
17 reasonable access without requiring overnight or possessory  
18 visitation.

19 (a-7) (1) A court may modify an order or judgment granting,  
20 denying, limiting, or restricting the visitation rights of a  
21 grandparent, great-grandparent, or sibling of a minor child if  
22 the moving party proves by clear and convincing evidence that a  
23 change has occurred in the circumstances of the child or the  
24 child's custodian and that the modification is necessary to  
25 protect the mental, physical, or emotional health of the child.  
26 The change in circumstances shall be based upon facts occurring  
27 after the court's visitation order or judgment or upon facts  
28 that were unknown to the court at the time of the prior  
29 visitation order or judgment. Unless by stipulation of the  
30 parties, no motion to modify a grandparent, great grandparent,  
31 or sibling visitation order may be made earlier than 2 years  
32 after the date the order was filed, unless the court permits it  
33 to be made on the basis of affidavits that there is reason to  
34 believe the child's present environment may endanger seriously

1 ~~the child's mental, physical, or emotional health.~~

2 (2) (Blank). ~~The court shall not modify a prior~~  
3 ~~grandparent, great grandparent, or sibling visitation order~~  
4 ~~unless it finds by clear and convincing evidence, upon the~~  
5 ~~basis of facts that have arisen since the prior visitation~~  
6 ~~order or that were unknown to the court at the time of entry of~~  
7 ~~the prior visitation, that a change has occurred in the~~  
8 ~~circumstances of the child or his or her custodian, and that~~  
9 ~~the modification is necessary to protect the mental, physical,~~  
10 ~~or emotional health of the child. The court shall state in its~~  
11 ~~decision specific findings of fact in support of its~~  
12 ~~modification or termination of the grandparent,~~  
13 ~~great grandparent, or sibling visitation.~~

14 (3) Attorney fees and costs shall be assessed against a  
15 party seeking modification of the visitation order if the court  
16 finds that the modification action is vexatious and constitutes  
17 harassment.

18 (4) Notice under this subsection (a-7) shall be given as  
19 provided in subsections (c) and (d) of Section 601.

20 (b) (1) (Blank.)

21 (1.5) The Court may grant reasonable visitation privileges  
22 to a stepparent upon petition to the court by the stepparent,  
23 with notice to the parties required to be notified under  
24 Section 601 of this Act, if the court determines that it is in  
25 the best interests and welfare of the child, and may issue any  
26 necessary orders to enforce those visitation privileges. A  
27 petition for visitation privileges may be filed under this  
28 paragraph (1.5) whether or not a petition pursuant to this Act  
29 has been previously filed or is currently pending if the  
30 following circumstances are met:

31 (A) the child is at least 12 years old;

32 (B) the child resided continuously with the parent and  
33 stepparent for at least 5 years;

34 (C) the parent is deceased or is disabled and is unable

1 to care for the child;

2 (D) the child wishes to have reasonable visitation with  
3 the stepparent; and

4 (E) the stepparent was providing for the care, control,  
5 and welfare to the child prior to the initiation of the  
6 petition for visitation.

7 (2) (A) A petition for visitation privileges shall not be  
8 filed pursuant to this subsection (b) by the parents or  
9 grandparents of a putative father if the paternity of the  
10 putative father has not been legally established.

11 (B) A petition for visitation privileges may not be filed  
12 under this subsection (b) if the child who is the subject of  
13 the grandparents' or great-grandparents' petition has been  
14 voluntarily surrendered by the parent or parents, except for a  
15 surrender to the Illinois Department of Children and Family  
16 Services or a foster care facility, or has been previously  
17 adopted by an individual or individuals who are not related to  
18 the biological parents of the child or is the subject of a  
19 pending adoption petition by an individual or individuals who  
20 are not related to the biological parents of the child.

21 (3) (Blank).

22 (c) The court may modify an order granting or denying  
23 visitation rights of a parent whenever modification would serve  
24 the best interest of the child; but the court shall not  
25 restrict a parent's visitation rights unless it finds that the  
26 visitation would endanger seriously the child's physical,  
27 mental, moral or emotional health. ~~The court may modify an~~  
28 ~~order granting, denying, or limiting visitation rights of a~~  
29 ~~grandparent, great-grandparent, or sibling of any minor child~~  
30 ~~whenever a change of circumstances has occurred based on facts~~  
31 ~~occurring subsequent to the judgment and the court finds by~~  
32 ~~clear and convincing evidence that the modification is in the~~  
33 ~~best interest of the minor child.~~

34 (d) If any court has entered an order prohibiting a

1 non-custodial parent of a child from any contact with a child  
2 or restricting the non-custodial parent's contact with the  
3 child, the following provisions shall apply:

4 (1) If an order has been entered granting visitation  
5 privileges with the child to a grandparent or  
6 great-grandparent who is related to the child through the  
7 non-custodial parent, the visitation privileges of the  
8 grandparent or great-grandparent may be revoked if:

9 (i) a court has entered an order prohibiting the  
10 non-custodial parent from any contact with the child,  
11 and the grandparent or great-grandparent is found to  
12 have used his or her visitation privileges to  
13 facilitate contact between the child and the  
14 non-custodial parent; or

15 (ii) a court has entered an order restricting the  
16 non-custodial parent's contact with the child, and the  
17 grandparent or great-grandparent is found to have used  
18 his or her visitation privileges to facilitate contact  
19 between the child and the non-custodial parent in a  
20 manner that violates the terms of the order restricting  
21 the non-custodial parent's contact with the child.

22 Nothing in this subdivision (1) limits the authority of  
23 the court to enforce its orders in any manner permitted by  
24 law.

25 (2) Any order granting visitation privileges with the  
26 child to a grandparent or great-grandparent who is related  
27 to the child through the non-custodial parent shall contain  
28 the following provision:

29 "If the (grandparent or great-grandparent, whichever  
30 is applicable) who has been granted visitation privileges  
31 under this order uses the visitation privileges to  
32 facilitate contact between the child and the child's  
33 non-custodial parent, the visitation privileges granted  
34 under this order shall be permanently revoked."

1 (e) No parent, not granted custody of the child, or  
2 grandparent, or great-grandparent, or stepparent, or sibling  
3 of any minor child, convicted of any offense involving an  
4 illegal sex act perpetrated upon a victim less than 18 years of  
5 age including but not limited to offenses for violations of  
6 Article 12 of the Criminal Code of 1961, is entitled to  
7 visitation rights while incarcerated or while on parole,  
8 probation, conditional discharge, periodic imprisonment, or  
9 mandatory supervised release for that offense, and upon  
10 discharge from incarceration for a misdemeanor offense or upon  
11 discharge from parole, probation, conditional discharge,  
12 periodic imprisonment, or mandatory supervised release for a  
13 felony offense, visitation shall be denied until the person  
14 successfully completes a treatment program approved by the  
15 court.

16 (f) Unless the court determines, after considering all  
17 relevant factors, including but not limited to those set forth  
18 in Section 602(a), that it would be in the best interests of  
19 the child to allow visitation, the court shall not enter an  
20 order providing visitation rights and pursuant to a motion to  
21 modify visitation shall revoke visitation rights previously  
22 granted to any person who would otherwise be entitled to  
23 petition for visitation rights under this Section who has been  
24 convicted of first degree murder of the parent, grandparent,  
25 great-grandparent, or sibling of the child who is the subject  
26 of the order. Until an order is entered pursuant to this  
27 subsection, no person shall visit, with the child present, a  
28 person who has been convicted of first degree murder of the  
29 parent, grandparent, great-grandparent, or sibling of the  
30 child without the consent of the child's parent, other than a  
31 parent convicted of first degree murder as set forth herein, or  
32 legal guardian.

33 (g) (Blank). ~~If an order has been entered limiting, for~~  
34 ~~cause, a minor child's contact or visitation with a~~



1 ~~grandparent, great-grandparent, or sibling on the grounds that~~  
2 ~~it was in the best interest of the child to do so, that order~~  
3 ~~may be modified only upon a showing of a substantial change in~~  
4 ~~circumstances occurring subsequent to the entry of the order~~  
5 ~~with proof by clear and convincing evidence that modification~~  
6 ~~is in the best interest of the minor child.~~

7 (Source: P.A. 93-911, eff. 1-1-05.)

8 Section 99. Effective date. This Act takes effect upon  
9 becoming law.".